

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

NETWERKES.COM OF MICHIGAN, INC. et al.)	Case No. 05-70117
)	
Plaintiffs.)	Arthur J. Tarnow
)	District Judge
v.)	
)	Donald A. Scheer
WILLIAM McLAUGHLIN, et al,)	Magistrate Judge
)	
Defendants,)	
)	
and)	
)	
SUPERIOR NETWERKES, L.L.C.,)	
)	
Counter-Plaintiff,)	
)	
v.)	
)	
A.L. HOLDINGS, INC. and NETWERKES.COM OF)	
MICHIGAN, INC.,)	
)	
Counter-Defendants.)	

**ORDER DENYING DEFENDANTS/COUNTER-PLAINTIFF'S OBJECTIONS TO
MAGISTRATE JUDGE'S ORDER GRANTING PLAINTIFFS LEAVE TO FILE FIRST
AMENDED COMPLAINT [DE 63]**

Before the Court are Defendants/Counter-Plaintiff's objections to the Magistrate Judge's order granting Plaintiffs leave to file a first amended complaint. The Magistrate Judge extended discovery by an additional 60 days in light of the proposed amended complaint, and allowed Defendants to apply to the Court for all costs, other than attorneys fees, incurred by taking discovery caused by the amendment, including all costs incurred in re-deposing persons deposed prior to amendment.

Defendants argue that the Magistrate judge erred in granting leave because: the proposed

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amendment was filed 14 months after the initial complaint and after two extensions of discovery cut-off dates; the new legal theories in the amended complaint were known to Plaintiff prior to the filing of the initial complaint; the proposed amendment contains a brand new theory of non-contractual liability; the parties have engaged in extensive discovery and formed their strategies in reliance on the initial complaint; and the proposed amendment was filed after defense counsel sought concurrence in a motion for summary judgment.

Also, Defendants argue that the Magistrate Judge erred because the amendment is futile as a matter of law, that is, Plaintiff's new theories would not survive dispositive motions under Rule 12 or Rule 56 of the Federal Rules of Civil Procedure.

The Court finds no merit in Defendants' objections. Defendants have already filed a motion for partial summary judgment as to the amended complaint. The order of the Magistrate Judge allowed Defendants additional time for discovery in light of the amendment and allowed Defendants to seek to recover whatever costs are incurred in conducting additional discovery. In light of the liberal policy in favor of amendment, the Court cannot conclude that the Magistrate Judge erred in allowing Plaintiff to file its first amended complaint. Therefore,

IT IS HEREBY ORDERED that Defendants' objections to the Magistrate Judge's order [DE 63] are DENIED.

SO ORDERED.

s/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: July 10, 2006

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I hereby certify that a copy of the foregoing document was served upon counsel of record on July 10, 2006, by electronic and/or ordinary mail.

s/Theresa E. Taylor

Case Manager